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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/876,442	06/07/2001	Robert J. Davies	GB 000085	8953

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EXAMINER

KNOWLIN, THJUAN P

ART UNIT PAPER NUMBER

2642

DATE MAILED: 02/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	<b>Application No.</b> 09/876,442	<b>Applicant(s)</b> DAVIES ET AL.	
	<b>Examiner</b> Thjuan P. Knowlin	<b>Art Unit</b> 2642	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 28 December 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: \_\_\_\_\_.  
 Claim(s) objected to: \_\_\_\_\_.  
 Claim(s) rejected: \_\_\_\_\_.  
 Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Attachment (Response to Arguments).  
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
 13. ☐ Other: \_\_\_\_\_.

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### ***Response to Arguments***


1. Applicant's arguments filed December 28, 2005 have been fully considered but they are not persuasive.
2. In regards to claims 1 and 3, Applicants argue that the combination of Ravago et al and Clarke, Jr. et al does not show the broadcast of a series of messages with data fields arranged according to a first communication protocol and additional data representing audio data added to the data of the first communication protocol, as claimed, nor do they produce the claimed invention which requires no communication from the portable device to the beacon, and the transmission by the beacon of data in accordance with a first protocol and transmission of an additional data field that contains audio data and which audio data is interpreted as a broadcast by the receiving portable device.
3. Examiner respectfully disagrees with these arguments. In regards to claims 1 and 3, Ravago discloses a method and audio data communications system (See Fig. 1 and Abstract) for enabling the user of a portable communications device (See Fig. 1 and telephony replay device 26) to receive broadcast audio messages wherein at least one beacon device (See Fig. 3, media server 44, and application replay module 50) broadcasts a series of messages each in the form of a plurality of predetermined data fields arranged according to a first communications protocol, wherein the beacon adds to each such message prior to transmission an additional data field carrying broadcast audio message data, and wherein the portable device receives the transmitted

messages, extracts the audio broadcast data from said additional data field, and reproduces the audio to the user (See col. 1-2 lines 66-24 and col. 5-6 lines 55-38).

Ravago, however, does not specifically disclose one-way broadcast of messages having audio data incorporated therein. Clarke, Jr., however, does disclose one-way broadcast of messages having audio data incorporated therein (See col. 1 lines 23-29, col. 11-12 lines 58-16, and col. 17 lines 31-44).

4. In regards to the above arguments made by Applicant, Applicant appears to be reading into the claims. For example, Applicant states that the combination of Clarke, Jr. and Ravago does not show the type of communication recited in Applicants' claims, such as requiring no communication from the portable device to the beacon, and the transmission by the beacon of data in accordance with a first protocol and transmission of an additional data field that contains audio data and which audio data is interpreted as a broadcast by the receiving portable device. According to Applicant, the present invention claims only one-way communication, whereas the prior art, teaches two-way communication. However, one-way communication is not recited in the claims. Furthermore, claim 2, of the present invention, recites the use of two-way communication, which goes against Applicant's argument of there being only one-way communication within the present invention.

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